

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT DINGLE, JR.,

Plaintiff,

MEMORANDUM & ORDER

20-CV-183 (EK) (LB)

-against-

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Bloom's Report and Recommendation ("R&R") dated March 15, 2023. ECF No. 73. Judge Bloom recommends that I grant the United States Department of Education's ("DOE") motion to dismiss plaintiff Robert Dingle's claims for lack of subject matter jurisdiction, pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure. Plaintiff timely objected, contending that the Court does have subject matter jurisdiction because this case involves questions of federal law, and raising arguments on the merits. Pl. Objs. 1-2, ECF No. 76.¹

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The district court

¹ Plaintiff's objection erroneously refers to Magistrate Judge Bloom's R&R as "Judge Komitee's report." *Id.* at 2.

reviews *de novo* those portions of an R&R to which a party has specifically objected. *Id.*; Fed. R. Civ. P. 72(b)(3); *see also Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (“A proper objection is one that identifies the specific portions of the R&R that the objector asserts are erroneous and provides a basis for this assertion.”), *aff’d*, 578 F. App’x 51 (2d Cir. 2014).

Having conducted a *de novo* review of the R&R, I adopt the R&R in its entirety, excluding the discussion of the merits of Dingle’s Fifth Amendment claim; because the Court lacks subject matter jurisdiction over Dingle’s claims for the reasons set forth in the R&R, I do not reach the merits. *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (a federal district court may entertain a lawsuit only when it has both the “statutory [and] constitutional power to adjudicate it”).

Accordingly, DOE’s motion to dismiss is granted. Dingle’s amended complaint is dismissed without prejudice for lack of subject matter jurisdiction. The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: June 7, 2023
Brooklyn, New York